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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1016

EASTERN AIR LINES, INC., *Petitioner,*

v.

FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, *et al.*, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Did the Court of Appeals correctly affirm the District Court's determination that it had no "federal question" jurisdiction under the Railway Labor Act, 45 U.S.C.A. sec. 151, *et seq.*, to award damages in an action by Eastern Air Lines, Inc. against a union com-

plaining of a "strike or work stoppage" which Eastern alleged did not arise out of a labor dispute between it and union under the Act.

STATEMENT OF THE CASE

Petitioner (sometimes hereinafter referred to as "Eastern") seeks a writ of certiorari to review the judgment of the Court of Appeals affirming an order of United States District Judge Dyer, Southern District of Florida, Miami Division, dismissing on federal jurisdictional grounds its complaint for damages allegedly caused by a "strike or work stoppage" by Eastern's flight engineers on February 17-23, 1961. The complaint joined as party defendants the Flight Engineers' International Association, the Eastern Chapter of the international union, one of the constituent units of the Chapter, and certain individual flight engineers (hereinafter referred to collectively as "Respondents" or "EAL Chapter.")[1] Damages of $900,000.00 per day were alleged, and injunctive relief was also sought.

On February 23, 1961, the "strike or work stoppage" terminated and, through the good offices of the then Secretary of Labor Arthur J. Goldberg, a back-to-work settlement was agreed upon. As part of the bargain, Eastern agreed not to take any disciplinary action against the flight engineers, and agreed to drop

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[1] Only two of these original defendants remain before the court, the EAL Chapter and the Miami Council of the EAL Chapter. The international union was never served with process, and the District Court dismissed the action against the individuals on the ground the complaint failed to state a claim against them upon which relief could be granted. With respect to the Miami Council, Respondents take the position the Council is not a suable entity nor amenable to judgment under federal law.

the pending litigation under circumstances EAL Chapter contends made the agreement a binding "accord and satisfaction."

Eastern honored this accord until June, 1962. Then, shortly after EAL Chapter instituted a strike against Eastern in protest against certain unfair labor practices, which strike is still in progress, Eastern reactivated the instant suit. Upon completion of the pretrial procedures, in October, 1963, EAL Chapter moved to dismiss the complaint on the following grounds, among others:

1. absence of "diversity of citizenship" jurisdiction;
2. absence of "federal question" jurisdiction; and
3. the dispute was within the exclusive jurisdiction of the grievance board established by the labor agreement, as mandated by Section 204 of the Act, 45 U.S.C.A. sec. 184.

Eastern's complaint had purported to ground federal court jurisdiction on both "diversity" and the existence of a "federal question" arising under the Railway Labor Act. However, with many of the flight engineers being residents of New York State or Florida, and thus co-citizens with Eastern, complete diversity was obviously lacking.

"Federal question" jurisdiction was similarly tenuous. Although the complaint sounded in Railway Labor Act violations, and even though Eastern had alleged its many contacts with federal law and regulation, the substance of the complaint appeared otherwise. The dispute giving rise to the "strike or work

stoppage" was alleged *not* to involve a labor dispute with Eastern under the Railway Labor Act. The complaint alleged that the object of the "strike or work stoppage" was *not* to obtain a new contract with Eastern, and was *not* to support a grievance under the old agreement. (R. 8, para. 19). Thus, neither a "major" dispute nor a "minor" dispute under the Act was involved. Rather, as alleged in the complaint, "this strike or work stoppage [was] in protest against the committee report concerning the United Air Lines representation dispute and [was] an effort to force the National Mediation Board to reject such report." (R. 7) The purpose of the "strike or work stoppage" was, Eastern alleged, "solely to make a public protest and demonstration concerning a dispute wholly unrelated to plaintiff and to bring pressure on the National Mediation Board." (R. 8)

EAL Chapter moved to dismiss for the reason that, on these allegations, whatever claim for damages Eastern might have, the claim rested solely on the contention the "public demonstration" was a breach of contract by the flight engineers not to strike, or was a tortious interference with Eastern's business. But, whether couched in contract or in tort terms, the essence of the claim was not federal law, and without this no "federal question" existed.

EAL Chapter's motion to dismiss was thoroughly briefed to United States District Judge Dyer. On November 18, 1963, Judge Dyer ruled Eastern had failed to establish complete diversity of citizenship upon which to base federal jurisdiction. The Court then set down for further oral argument the "existence of 'Federal Question' jurisdiction only."

Further oral argument was held on December 6, 1963. Judge Dyer then held "federal question" jurisdiction was also lacking, and dismissed the complaint. Judge Dyer never reached EAL Chapter's third objection to federal jurisdiction, namely that the dispute was within the exclusive jurisdiction of a grievance board. A ruling on that issue was pretermitted by dismissal of the complaint.

On appeal Eastern abandoned its claim that "diversity of citizenship" jurisdiction existed, and pressed only the "federal question" issue. In a "Reply Brief" filed with the Court shortly prior to argument, Eastern raised for the first time an argument it had neglected to present to the District Court. Eastern claimed, without having given the District Court an opportunity to pass upon the point, federal court jurisdiction could be founded also upon the doctrine of "pendent jurisdiction."

Only Eastern presented oral argument to the Court of Appeals. EAL Chapter rested its case on its briefs. On January 12, 1965, the Court of Appeals affirmed the dismissal of the complaint in a unanimous opinion written by Chief Judge Tuttle.

The Court of Appeals concluded that Eastern's damage claim was in "nowise dependent upon an interpretation of the Railway Labor Act." 340 F. 2d at 107. Instead, the Court held the relationships between Petitioner and Respondents "are fixed by contract." If any claim is presented by Eastern complaint, it is for "breach of contract," a matter outside the limited embrace of the Railway Labor Act. *Ibid.*

The Court found the Railway Labor Act of narrow scope, with "nothing in the Act itself that prohibits

self-help except in . . . two circumstances ["major" or "minor" disputes]." A strike in protest against the National Mediation Board was not, the Court held, within those matters governed by the Railway Labor Act. The Court stated:

> "Thus, it cannot be said that a strike which is not in support of the position being maintained by the striking employees in either a minor or major dispute, as the case may be, is prohibited by the terms of the Act." *Id.* at 106.

The Court found the silence of the statute dispositive in another respect. Congress, when it has sought to invest the federal courts with jurisdiction over breach of contract claims between employers and employees or their unions, "has found means to do so." This, the Court noted, Congress did do in enacting Section 301(a) of the Labor Management Relations Act, 1947, 29 U.S.C.A. sec. 185(a). This Congress did not do when it passed the Railway Labor Act.

> "We find no other provision of the Railway Labor Act which expressly places in Eastern Airlines the right to bring an action in the Federal District Court to enjoin or seek damages for a breach of the employment contract which Eastern alleges occurred when the appellees went out on strike on February 17th. Where Congress has sought to give such right in other labor management disputes, it has found means to do so as is indicated by Section 301 of the Labor Management Relations Act, 1947, 29 U.S.C.A. § 185(a)." *Id.* at 106-107.

Finally, the Court below found nothing in the several nexuses between Eastern and other federal regulatory statutes to bring Eastern's complaint within the "limited jurisdiction" of the federal courts.

> "The jurisdiction statutes do not embrace every action that may be brought by a person engaged in interstate commerce merely because the defendant in the action may be charged with conduct that in some way would amount to interference with the free flow of commerce. This, in effect, is what Eastern Air Lines seeks to have this court permit." *Id.* at 107.

In sum, the Court concluded:

> "We conclude that since the Railway Labor Act does not expressly prohibit a strike under the circumstances that existed in this case, and since a recovery or denial of recovery for the breach of contract alleged here is in nowise dependent upon an interpretation of the Railway Labor Act, the trial court was correct in its determination that federal question jurisdiction did not attach to this complaint." *Ibid.*

Eastern's petition for rehearing was denied on February 25, 1965.

REASONS FOR DENYING THE WRIT

In its petition Eastern buries in a surfeit of cases alleged to be in conflict with the judgment below a fact of overriding significance: The instant case is *sui generis.* It is unique on its facts and one of first impression in the Courts below. Counsel for Respondents can find no other suit like it under the Railway Labor Act in any federal court, and certainly Eastern points to none.

The typical case arising under the Railway Labor Act is one easily labelled "major" dispute or "minor" dispute, as those expressions of art are used by the courts in describing controversies under the Act be-

tween management and labor. The instant case, as alleged in the complaint, was neither of these, however. It was not one growing out of a dispute for a new collective bargaining agreement, nor was it a case which involved a dispute over the interpretation or application of an old agreement. The dispute did not even involve Eastern, or what Eastern had or had not done. The only complaint the flight engineers had, and as alleged in the complaint the triggering event for the "strike or work stoppage," was the class or craft decision of the National Mediation Board in the United Air Lines case.

Notwithstanding Eastern's undocumented suggestions to the contrary, an unfortunate attempt to influence the Court's view of the importance of this singular case, there is not a shred of evidence to support the charge that the "strike or work stoppage" was a device, or a cover, or a camouflage, actually designed to force Eastern to capitulate in a "major" or "minor" dispute. Whatever may be said of a case wherein a strike is "ostensibly" called for one purpose, but is truly perpetrated to accomplish another, that is not the instant case. Eastern knows this, its complaint alleges this, and Eastern is bound by this. This Court should leave to another day, and to another case, the opportunity to resolve "federal question" jurisdiction under those circumstances.

The two reasons given by Eastern to support the writ, a conflict between decisions and the general importance of this case, fall when the uniqueness of this case is recognized.

The decisions cited by Eastern (Pet. 16-17, 21) for the proposition that other courts have held that "fed-

eral question" jurisdiction is stated on its complaint are all clearly inapposite and present no conflict. No one quarrels, including the Court below, with the holding in those cases that the federal courts may enjoin strikes under the Railway Labor Act under certain circumstances.[2] The Court below specifically stated:

> "Both parties to this litigation agree that the Railway Labor Act, 45 U.S.C.A. § 151 et seq., prohibits self-help by employees and employers in rail carrier and air carrier fields under two well-known sets of circumstances. Not only is this true, but the courts have recognized that under either of these two sets of circumstances the anti-injunction prohibition of the Norris-LaGuardia Act is not applicable, and a strike by employees or a violation of the terms of the Act by the carrier, warrants the issuing of an injunction at the instance of the injured party." 340 F. 2d at 106.

However, the Court below also quite properly recognized this did not answer the "federal question" jurisdiction issue over Eastern's damage claim; rather, it merely raises the issue.[3]

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[2] The value of these "conflicting" decisions as precedents is lessened by the fact that some were on *ex parte* motions for preliminary relief and it does not even appear the jurisdictional issues were litigated. The exception is *Brotherhood of Railroad Trainmen* v. *N.Y. Central R.R.*, 246 F. 2d 114 (6th Cir. 1957). Respondents respectfully suggest Judge, now Justice, Stewart's dissent represents the correct view of the jurisdictional issue in that case.

[3] Eastern also claimed below that if the federal court had jurisdiction to enjoin the strike, jurisdiction to award damages must also obtain. This, of course, begs the question of the jurisdiction of the District Court to enjoin the strike herein, a matter never litigated in the District Court during the injunctive proceedings in February, 1961. *Bell* v. *Hood*, 71 F. Supp. 813 (S.D. Calif. 1947), discussed *infra* p. 15, is one of many cases opposed to Eastern's position. Eastern has abandoned this contention before this Court.

The Court of Appeals read the Railway Labor Act as being less than an all-pervasive statute and less than totally preemptive of the field of disputes between employees and anyone else, including government agencies. Eastern is critical of this reading and cites the decisions of this Court in *International Association of Machinists* v. *Central Airlines,* 372 U.S. 682 (1963) and *Republic Steel Corp.* v. *Maddox,* —— U.S. —, 85 Sup. Ct. 614 (Jan. 25, 1965), as commanding that the Act must not be construed to leave a "hiatus" in the application and interpretation of the statute.

Eastern's contention is misplaced and the cases cited are inapposite and present no conflict. To argue, as Eastern does, that the Act must be read expansively evinces less than complete understanding of our federal system and the "essentially incomplete and interstitial nature of federal law."[4] The Court below was quite correct in its view of the scope of the Act. Our federal system is founded upon a grant of limited powers to the national government, with Article III of the Constitution carving out only limited jurisdiction for the federal courts. The Court of Appeals properly held Congress, in exercising its limited powers, has chosen not to regulate the conduct complained of here by Eastern. *Cf. Huron Cement Co.* v. *City of Detroit,* 362 U.S. 440, 444-445 (1960).

In this instance as in many others Congress, fully appreciative of the resulting diversity and "medley of attitudes," *Retail Clerks International Association, Local 1625* v. *Schermerhorn,* 375 U.S. 96, 104-105 (1963), has left to the states and their courts regula-

[4] Hart, *The Relations Between State and Federal Law,* 54 Col. L. Rev. 489, 525 (1954).

tion of the conduct in question. This non-uniformity is the essence and strength of our federalism. It is inherent in the law, especially in the transportation industry.[5] Eastern may claim the results absurd, but there can be no quarrel that such diversity exists in in our federal system.

The judgment below is not out of the mainstream of judicial opinion on "federal court" jurisdiction, nor does it represent an exceptional view of Congressional regulation of labor relation matters. *N.L.R.B.* v. *International Longshoremen's Association,* 332 F. 2d 992 (4th Cir. 1964), confirms that Congress has not yet chosen to exercise the panoply of its regulatory authority over labor matters affecting commerce. In that case, just as here, the Court found federal law did not regulate the alleged "labor dispute" arising out of a refusal to work. The Court rejected "the notion that whenever a union calls a work stoppage or refuses to supply labor there is a 'labor dispute.'" *Id.* at 996. The Court concluded that what was actually involved, by the union's refusal to load ships of an owner of vessels trading with Cuba during the "Missile Crisis," was a dispute "political in nature." *Id.* at 995. The opinion below herein is to a similar effect in its definition of conduct proscribed by the Railway Labor Act.

Maddox and *Central Airlines* are not in conflict with the judgment below, and they compel no different re-

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[5] For example, many states have different and oft-times conflicting "full crew" laws for trains passing through their states. See *Missouri Pacific R.R.* v. *Norwood,* 283 U.S. 249 (1931). Similarly, an interstate air carrier's employment practices may be lawful in one state, but discriminatory in another. See *Colorado Anti-Discrimination Comm'n* v. *Continental Air Lines,* 372 U.S. 714 (1963).

sult. *Maddox* was a Labor Management Relations Act suit involving the application of Section 301 of that Act, the very section the Court below herein found absent from the Railway Labor Act and from this case. In *Maddox,* the action had been prosecuted in the state courts; it did not involve, and could not have involved, the "federal question" jurisdiction of the federal courts, the sole issue herein. Finally, there is nothing in *Maddox,* a wrongful discharge case by an employee against his employer, which even remotely suggests the federal courts have jurisdiction under the Railway Labor Act to award damages to an employer for losses sustained by a "public demonstration" against the National Mediation Board.

Central Airlines is equally inapt. The twin pillars of that decision, a specific duty mandated by the Railway Labor Act which has been abrogated and a strong federal interest in uniformity of enforcement of arbitration awards under the Act, are absent here. The suit by the union in that case to enforce a favorable award was not grounded on a claim of contract violation or tort injury, as here. The union there was seeking to enforce a duty specifically imposed by Section 204 of the Act, 45 U.S.C.A. sec. 184, the duty to establish a grievance board to resolve "minor" disputes. No proscription, implicit or explicit, is found in the Act governing "public demonstrations" of the character involved herein. The Act is silent on the matter of duties and rights under the instant unique circumstances.[6]

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[6] Cases relied upon by this Court in *Central Airlines,* and cited by Eastern (Pet. 14), *Virginian Ry.* and *Steele,* are also not in point for they too involve circumstances wherein the Court could properly determine the Railway Labor Act stated certain duties, which duties had been abrogated.

The other support for *Central Airlines,* avoidance of multiple state court enforcement of federally "compelled arbitration," is also missing here. The serious conflicts-of-law problems referred to by the Court in *Central Airlines,* problems suggested by the Brief for Petitioners in that case at p. 33, n. 24, are not presented here. Likewise, with respect to the evil of several state courts asserting jurisdiction and rendering conflicting judgments. Here, unlike in *Central Airlines,* there can be only one plaintiff, the employer, seeking damages. Just as clearly only one state jurisdiction will be invoked, the state wherein the union treasury is situated. "Forum shopping" among the states will not, as a practical matter, occur here.

The remaining ground asserted by Eastern to support the writ, an alleged conflict between decisions on the doctrine of "pendent jurisdiction," flounders on Eastern's misunderstanding of the effect of the exercise of judicial power in the first instance and on Eastern's misstatement of the doctrine itself.[7]

Eastern labors under the misapprehension that a federal court, by deciding it has no "federal question" jurisdiction under a federal statute, thereby determines a "federal question" which, *ipso facto,* establishes federal court jurisdiction. Pet. 9-10, 23-24. If this were so, of course, "federal question" jurisdiction would be unlimited, and federal court jurisdiction

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[7] No good reason appears why, Eastern having failed to present its "pendent jurisdiction" claim to the District Court for consideration, and the Court of Appeals having disposed of it *sub silentio,* this Court should accord the contention any weight whatsoever in its own consideration of the petition. Nevertheless, because the Court may wish to have Respondents' views on the contention, they are set forth for the Court's convenience.

under Article III of the Constitution would be all-embracing, rather than limited as now.

It must be admitted that a court has

> "a power to interpret the language of the jurisdictional instrument and its application to an issue before the court. Where adversary parties appear, a court must have the power to determine whether or not it has jurisdiction of the person or a litigant, or whether its geographical jurisdiction covers the place of the occurrence under consideration." *Stoll* v. *Gottlieb*, 305 U.S. 165, 171 (1938).

But, while the Courts must have this power, and

> "While every court of general jurisdiction has power to determine whether the conditions essential to its exercise exist . . . exercise of this power cannot create additional jurisdiction." *Green* v. *Obergfell*, 121 F. 2d 46, 54-55 (D.C. Cir.), *cert. denied*, 314 U.S. 637 (1941).

Thus, the District Court and the Court of Appeals did not, by deciding the jurisdictional issue that Eastern's claim did not "arise under the Railway Labor Act," thereby determine a "federal question" which establishes federal jurisdiction. It follows necessarily that the District Court also did not thereby acquire jurisdiction to decide the merits of Eastern's claim under the doctrine of "pendent jurisdiction." It would be sheer "bootstrap" if it were otherwise.

However, assuming *arguendo* that the District Court did somehow decide a "federal question" sufficient to establish its jurisdiction when it determined "federal question" jurisdiction did not exist, application of the "pendent jurisdiction" doctrine here falters for yet another reason. To enable the federal courts to de-

cide a "non-federal" ground, the Supreme Court held in *Hurn* v. *Oursler,* 289 U.S. 238 (1933), that ground must be joined with a "federal" ground in support of a single cause of action. This Court has never held, as Eastern contends, that where two distinct and separate causes of action are presented, one a "federal claim" and the other a "state claim," the federal courts have jurisdiction to determine the state claim. In fact, in *Hurn*, this Court held precisely to the contrary, stating that the separate and distinct state claim is "entirely outside the federal jurisdiction and subject to dismissal at any stage of the case." 289 U.S. at 245-246.

At best, Eastern can claim only the instant case involves two different remedies, one for injunctive relief and the other for damages. But damages, unlike "grounds" to support a claim, are not "facts" stated to show a violation of law any more than an injunction is. They both are a form of relief or a remedy. The request for one does not support the exercise of jurisdiction over the other under the doctrine of "pendent jurisdiction."

Bell v. *Hood*, 71 F. Supp. 813 (S.D. Calif. 1947), on remand from 327 U.S. 678 (1946), disposes completely of Eastern's argument that the District Court had "pendent jurisdiction" to decide Eastern's "non-federal" damage claim. In *Bell,* the plaintiffs argued that under the rule of *Hurn,* the District Court must retain jurisdiction to determine the "non-federal" claim, "namely, the cause of action for damages under California law." 71 F. Supp. at 819. This argument was rejected, in the following terms:

> "If the complaint alleged a 'federal cause of action' and a 'state cause of action' so identical as to

be a really only two different grounds in support of a single cause of action, then the rule of Hurn v. Oursler would apply, and this court would hear and determine the state cause of action in order to dispose of the entire controversy. But the federal cause of action is entirely wanting in the complaint at bar.

"'Where, as here, neither the constitutional provision nor any act of Congress affords a remedy to any person, the mere assertion by a plaintiff that he is entitled to such a remedy' *does not constitute a federal cause of action.* Cf. Bell v. Hood, supra, 327 U.S. at 685-686, 66 S.Ct. 778, 90 L.Ed. 939.

". . . Being of the opinion that neither the Constitution nor the statutes of the United States give rise to any cause of action in favor of plaintiffs upon the facts alleged, I hold that federal courts cannot now grant such recovery. Nor does any other ground appear upon which relief can be granted to plaintiffs in this court." 71 F. Supp. at 820.

Eastern's similar contention is without merit for the same reasons.

Eastern's petition presents no good reason to support the writ. The instant case is one unto itself. The rule of law established by the Court of Appeals is of limited application because of the uniqueness of the factual context. The judgment of the Court below, far from being in conflict with decisions of this Court or other Courts of Appeals, conforms to judicial opinion that Congress has not yet chosen to preempt regulation of all labor affairs affecting commerce.

Eastern, in effect, is asking this Court to amend the Railway Labor Act to encompass the present dispute.

The Court of Appeals committed no error by refusing to accept this new role. Nor did the Court err when, after applying the familiar test of determining "federal question" jurisdiction, it found Eastern's losses, if any, did not stem from any violation of the Railway Labor Act. The Court below correctly held these alleged losses resulted instead from a violation of some "normal, common-law principles," if at all, within the jurisdiction of the Florida state courts. 340 F. 2d at 107. *Accord, Consolidated Freightways, Inc.* v. *United Truck Lines, Inc.*, 216 F. 2d 543 (9th Cir. 1954), *cert. denied*, 349 U.S. 905 (1955); *Downing* v. *Howard*, 69 F. Supp. 6 (D. Dela. 1946), *aff'd on other grounds*, 162 F. 2d 654 (7th Cir. 1947); *Crawford* v. *Pituch*, 91 F. Supp. 626 (W.D. Pa. 1950).

CONCLUSION

The petition fails to disclose any matter or ground why the cause should be reviewed by this Court. Accordingly, the petition should be denied.

Respectfully submitted,

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